

REMARKS

In response to the Office Action mailed on September 24, 2007, Applicants submit this Amendment. Previously, claims 1-40 were cancelled, and claims 67-81 and 85 were withdrawn as non-elected subject matter. Applicant expressly reserves the right to file a divisional application(s) directed to the non-elected claims.

According to the Office Action, claims 41-66, 82 and 86-89 have been examined. It is further believed that claims 83 and 84 have also been examined. The Office Action asserts objections to the claims, rejections under 35 U.S.C. § 112, rejections under 35 U.S.C. § 102, and rejections under 35 U.S.C. § 103.

This Amendment amends claims 41, 46-48 and 50-57, adds new claims 90-92 and cancels claims 42. No new matter has been added by virtue of these amendments. In view of the amendments to the claims and remarks below, Applicants respectfully request reconsideration and withdrawal of the asserted objections and rejections, that claim 85 be rejoined, and that a Notice of Allowance allowing all pending claims be issued.

Objection to the Claims

Claims 46 and 57 have been objected to for misspellings. The amendments to these claims correct the misspellings. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Claim 53 has been objected to as purportedly being of improper dependent form. Claim 53 has been amended into independent form, and incorporates all of the limitations recited in prior claims 41, 42 and 52. Applicants respectfully request that this rejection be withdrawn.

Rejection under 35 U.S.C. § 112

Claims 48 and 52 have been rejected under 35 U.S.C. § 112, second paragraph as purportedly being indefinite for reciting an example of the recited genera in "such as" clauses. The claims have been amended to remove the "such as" clauses. Accordingly, Applicants respectfully request that these rejections be withdrawn.

Claim 50 has been rejected under 35 U.S.C. § 112, second paragraph as purportedly being indefinite. Specifically, the Office Action contends that claim 50 is indefinite because the Markush group lists genes and termination sequences that are not within the same class. Claim 50 has been amended to remove the recitation of a termination

sequence. Accordingly, claim 50 is direct to “the terminator is selected from the group consisting of *psb A*, *rrn*, *rbcL*, *trnV* and *rps16*.” For this reason, Applicants respectfully request that this rejection be withdrawn.

Claim 55 has been rejected under 35 U.S.C. § 112, second paragraph, as purportedly being indefinite. Specifically, on page 4, the Office Action contends that, in claim 42, the plant species is *Asteraceae*, but *Asteraceae* does not relate to the source of the plant material. Claim 55 has been rewritten to incorporate the limitations of claim 41, and recites that the plant material is derived from *Asteraceae*. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Claim 56 has been rejected under 35 U.S.C. § 112, second paragraph, as purportedly be indefinite for its recitation of “LCV1 A-B”, “LCV1 C-D”, “LCV2 A-B” and “LCV2 C-D”. Applicants amended these recitations to “selected from the group consisting of SEQ ID NOs: 6, 7, 8, 9, 13, 14, 15 and 16.” Accordingly, Applicants respectfully request that this rejection be withdrawn.

On pages 7 and 8, the Office Action acknowledges that the subject matter recited in claims 53, 55 and 56 is free of the prior art, and states that claims 53, 55 and 56 would be allowed if amended to overcome the rejections under 35 U.S.C. § 112, second paragraph. In view of the amendments to claims 53, 55 and 56, and the above remarks, Applicants respectfully submit that claims 53, 55 and 56 overcome the rejections under 35 U.S.C. § 112, second paragraph. Accordingly, at a minimum, these claims should be allowed.

Rejection under 35 U.S.C. § 102

Claims 41-47, 49-52, 54, 57, 61-65, 82-84 and 86-89 have been rejected under 35 U.S.C. § 102(b) as purportedly being anticipated by Blowers *et al.* (WO 99/05265). On page 4, the Office Action acknowledges that Blowers *et al.* teach transformation of tobacco plastid genomes. Tobacco is a *Solanaceae* plant, not an *Asteraceae* plant.

On page 5, the Office Action states that “the limitation in claim 42 and all its dependant claims that the plant species is *Asteraceae* has not been given patentable weight because the recitation occurs in the preamble.” Applicants respectfully traverse the rejection of claim 42 and its dependents because the recitation that the plant species is *Asteraceae* should have been given patentable weight. Notwithstanding this traversal, Applicants have cancelled claim 42, and amended claim 41 to recite that the plant material is derived from

Asteraceae. Blowers *et al.* do not teach subjecting a plant material derived from *Asteraceae*, which comprises plastids, to a transformation treatment.

Additionally, Blowers *et al.* teach a method using a solid medium. On page 42, Blowers *et al.* teach placing tobacco NT1 suspension onto solid NT1 medium containing either 0.4 M mannitol or a combination of 0.2M sorbitol/0.2M mannitol. Claim 41, and claims 43-47, 49-52, 54, 57, 61-65, 82-84 and 86-89 that depend from claim 41, all recite that the medium is liquid.

Therefore, Blower *et al.* fail to teach each and every element recited in claims 41, 43-47, 49-52, 54, 57, 61-65, 82-84 and 86-89. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Rejection under 35 U.S.C. §103


Claims 41-47, 49-52, 54, 57-65, 82-84 and 86-89 have been rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over Blowers *et al.* in view of Maliga *et al.* (U.S. Pat. No. 6,388,168). Claims 41-52, 54, 57, 59-65, 82-84 and 86-89 have been rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over Blowers *et al.* in view of Daniell (WO 99/10513). As discussed above, Blowers *et al.* fail to teach subjecting a plant material derived from *Asteraceae*, which comprises plastids, to a transformation treatment, and using a liquid medium. These failures are not overcome by Maliga and/or Daniell. Therefore, the combination of Blowers *et al.* with Maliga and/or Daniell do not make obvious the invention as recited in claims 41-52, 54, 57-65, 82-84 and 86-89. Accordingly Applicants respectfully request that this rejection be withdrawn.

Applicants note that, although the page 1 of the Office Action states that claim 66 has been rejected, the grounds for rejecting claim 66 are not mentioned in pages 2-8 of the Office Action. Accordingly, Applicants respectfully request allowance of claim 66.

Conclusion

Applicants respectfully request reconsideration and withdrawal of the asserted rejections, and allowance of claims 41-66 and 82-92

Respectfully submitted,
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